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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,376	03/30/2001	George H. Butcher III	7056.014	5338

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EXAMINER

BORLINGHAUS, JASON M

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/823,376	Applicant(s) BUTCHER, GEORGE H.	
	Examiner Jason M. Borlinghaus	Art Unit 3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 15, 17-33.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


HYUNG SOUG
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 3600

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument that prior art reference (Bella) can be differentiated from the claimed invention, examiner disagrees. In Bella, the bond issuer is under a contractual obligation via the issued revenue bond to make set payments based upon a set schedule, as is the nature of bonds and repayment obligations. In Bella, the bond issuer is implicitly required to set revenue rates sufficient to satisfy the contractual obligations under the revenue bond. Failure to set such rates would result in contractual breach of the bond, as insufficient funds would be generated to meet the contractual obligations under the bond, and the bond issuer would be in default.

Applicant argues that the claimed invention differs from Bella, in that the claimed invention, a bond, incorporates "a requirement that the bond issuer establish revenue rates sufficient to pay the repayment obligation by the expected repayment date." However, all the applicant is doing is stating explicitly a "requirement to establish sufficient revenue rates sufficient" to repay the bond, which is stated implicitly in Bella in that sufficient revenue rates need to be established to cover the required repayments.

Furthermore, applicant's argument that Bella presents an option to "pay the repayment obligation or risk default," while the claimed invention does not present such option is nonsensical. A bond issuer always has the option to default or not honor the contractual obligations of the bond, no matter the contractual requirements of the bond or the manner in which they are expressed, although the exercise of such an option would have obvious negative financial and legal ramifications. A bond issuer can merely choose to violate the terms of the bond, such as failing to pay the established repayment amount, failing to pay said amount on the established timeschedule or failing to honor the revenue rate established within the bond, itself. Additionally, even if the bond issuer intended and actively sought to comply with all contractual obligations as set for in the bond, there is always the possibility that the bond issuer will still default on the bond, through no fault of their own, as can happen when there is an unanticipated revenue shortfall or disaster strikes the bond-funded project.

Submitted and accepted amendments do not overcome previous rejections, as such amendments merely correct typographical errors. Thus, the finality of the previous Office Action is maintained.